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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/051,730	01/22/2002	William E. Julien	7235	8655

7590 03/21/2003

Paul M. Denk
763 South New Ballas Road
St. Louis, MO 63141

EXAMINER	
SAYALA, CHHAYA D	
ART UNIT	PAPER NUMBER
1761	

DATE MAILED: 03/21/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

HG

Application No.	Applicant(s)
10/051,730	JULIEN, WILLIAM E.
Examiner	**Art Unit**
C. SAYALA	1761

Office Action Summary

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____ .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-13* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-13* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

4)☐ Interview Summary (PTO-413) Paper No(s).

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-13 are rejected under 35 U.S.C. 102(b) as being by anticipated by Julien (US Patent 5709894).

See claims 1-10 which show all of the limitations. The product is the same as claimed herein except for the use terminology. A mere discovery of additional result in the use of the same old added materials in a composition cannot, of itself lend patentability to the claims. Besides, for composition claims, intended use of an otherwise old or obvious composition cannot render a claim patentable. In re Zierden, 162 USPQ 102, In re Jones, 50 USPQ 48, In re Spada, 15 USPQ 2d, 1655, In re Thuau 57 USPQ 324.

3. Claims 1-13 are rejected under 35 U.S.C. 102(b) as being by anticipated by Julien. (US Patent 5783228)

same as claimed herein except for the use terminology. A mere discovery of additional

result in the use of the same old added materials in a composition cannot, of itself lend patentability to the claims. Besides, for composition claims, intended use of an otherwise old or obvious composition cannot render a claim patentable. In re Zierden, 162 USPQ 162, In re Jones, 50 USPQ 48, In re Spada, 15 USPQ 2d, 1655, In re Thuau 57 USPQ 324.

4. Claims 1-13 are rejected under 35 U.S.C. 102(b) as being by anticipated by Julien. (US Patent 5863574).

See col. 5, all the claims, col. 6, lines 15-20, col. 5, lines 35-45, col. 6, lines 45-51. The product is the same as claimed herein except for the use terminology. A mere discovery of additional result in the use of the same old added materials in a composition cannot, of itself lend patentability to the claims. Besides, for composition claims, intended use of an otherwise old or obvious composition cannot render a claim patentable. In re Zierden, 162 USPQ 102, In re Jones, 50 USPQ 48, In re Spada, 15 USPQ 2d, 1655, In re Thuau 57 USPQ 324.

5. Claims 1-4, 7,10-13 are rejected under 35 U.S.C. 102(b) as being by anticipated by Stuhr Enterprises, Inc. (WO 98/49903)

carrier of wheat middlings, uses a temperature as shown at page 9, and discloses a

moisture content between 1-10% (abstract). The product is the same as claimed herein except for the use terminology. A mere discovery of additional result in the use of the same old added materials in a composition cannot, of itself lend patentability to the claims. Besides, for composition claims, intended use of an otherwise old or obvious composition cannot render a claim patentable. In re Zierden, 162 USPQ 102, In re Jones, 50 USPQ 48, In re Spada, 15 USPQ 2d, 1655, In re Thuau 57 USPQ 324.

Double Patenting.

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington,* 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

6. Claims 1-13 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-5 of U.S. Patent No.

distinct from each other because the feed additive is the same as the soil adjuvant.

7. Claims 1-13 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-7 of U.S. Patent No. 6514521. Although the conflicting claims are not identical, they are not patentably distinct from each other because the feed additive is the same although the claims herein are drawn to a soil adjuvant.

8. Claims 1-13 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-13 of U.S. Patent No. 5709894. Although the conflicting claims are not identical, they are not patentably distinct from each other because the reference feed additive is the same although the instant claims are of a different scope only to the extent of its use terminology.

9. Claims 1-13 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-4 of U.S. Patent No. 5863574. Although the conflicting claims are not identical, they are not patentably distinct from each other because the feed additive is the same although the claim is of a different scope and the methods to feeding an animal overlap.

10. Claims 1-13 are rejected under the judicially created doctrine of obviousness-

5783238. Although the conflicting claims are not identical, they are not patentably

distinct from each other because the feed additive is the same although the claim is of a different scope and the methods to feeding an animal overlap.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. SAYALA at Group 1761, telephone number (703) 308-3035.

The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3599.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is 703-308-0661.

C. SAYALA
Primary Examiner
Group 1700.